MEGARINA SDN BHD

v.

ENERSAFE SDN BHD

HIGH COURT MALAYA, KUALA TERENGGANU
NIK HASHIM J
[CIVIL SUIT NO: 22-50-2001]
31 DECEMBER 2001

CIVIL PROCEDURE: *Jurisdiction - Court - Cause of action and facts on which action was based occurring in Terengganu and Sarawak - Whether High Court at Kuala Terengganu or Sarawak had jurisdiction to hear claim - Section 23(1) Courts of Judicature Act 1964 - Transferring case under O. 92 r. 3A(1) Rules of the High Court 1980*

The defendant herein appealed against the decision of the Senior Assistant Registrar ("SAR") who dismissed the defendant's application to strike out the plaintiff's writ and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 ("RHC") as disclosing no reasonable cause of action against the defendant on the ground that this court did not have the jurisdiction to entertain the plaintiff's claim.

Held:

[1] In order to decide whether or not this court had jurisdiction to s. 23(1) of the Courts of Judicature Act 1964 had to be examined. The said subsection has four subsections (a), (b), (c) and (d) and each of them is followed by a comma and the word "or", and this means that they must be construed disjunctively. Thus, a party instituting a proceeding in a High Court may do so if his case falls within any one of the subparagraphs. (pp 480 e & 481 a)

[2] The plaintiff had brought itself within s. 23 (1)(c) and (b) of the Act as the facts on which the action was based occurred in Terengganu, while although the defendant resided in Miri, Sarawak but possessed a business address in Terengganu. Therefore, the plaintiff was entitled to file its action at Kuala Terengganu High Court and accordingly, this court has the jurisdiction to hear the plaintiff's action. (p 481 c)

[2a] It also appeared that since the cause of action arose and the facts on which the action was based had also occurred in Miri, Sarawak, thus both the High Courts at Kuala Terengganu and Sarawak have jurisdiction to hear the plaintiff's claim. (p. 481 c-d)

[3] The defendant should have resorted to O. 92 r. 3A(1) of the RHC by making an application to the Chief Judges for an order to transfer the case to Sarawak, rather than make an application to strike out the plaintiff's action as it did in the instant case. (p 481 e-f)

[Appeal dismissed; decision of SAR affirmed.]

Case(s) referred to:
Fung Beng Tiat v. Marid Construction Co [1997] 2 CLJ 1 ***(refd)***
Malacca Securities Sdn Bhd v. Loke Yu [1998] 3 CLJ 22 ***(foll)***

Legislation referred to:
Courts of Judicature Act 1964, s. 23(1)(a), (b), (c), (d)
Rules of the High Court 1980, O. 18 r. 19, O. 92 r. 3A(1)

For the plaintiff - SW Chow; M/S Wong & Assoc
For the defendant - Venu Nair; M/s Paul Cheah & Assoc

Reported by Raja Vishnu Sivarajah

JUDGMENT

Nik Hashim J:

The Facts
This is an appeal against the decision of the learned senior assistant registrar (the SAR) who on 22 April 2001 dismissed with costs the defendant's application by way of summons in chambers filed on 3 December 2000 to strike out the plaintiff's writ and statement of claim under O. 18 r. 19 of the Rules of the High Court 1980 (the RHC) as disclosing no reasonable cause of action against the defendant within the jurisdiction of this High Court, on the ground that this High Court does not have the jurisdiction to entertain the plaintiff's claim.

The plaintiff's claim against the defendant is for the sum of RM3,382,740.72 being the amount allegedly due to the plaintiff from the defendant in respect of goods sold and delivered by the plaintiff to the defendant at its project in Paka, Terengganu pursuant to an agreement dated 15 November 1996. At the material time the defendant was having a business address at No. 743 Jalan Besar, Kg Cacar Batu, 23100 Paka, Dungun, Terengganu, but resides in Miri, Sarawak.

Contentions Of The Parties
Learned counsel for the defendant argued that this High Court lacks the jurisdiction to hear the plaintiff's claim for the following reasons:

(i) The defendant resides in Miri, Sarawak. Therefore, s. 23(1)(b) of the Courts of Judicature Act 1964 (the Act) applies in favour of the defendant.

(ii) All the invoices of the plaintiff were issued and effected in Miri, Sarawak and sent to the defendant for payment there in Sarawak. The failure by the defendant to pay the amount stated in the said invoices constituting the alleged breach of the agreement on the part of the defendant, occurred in Miri, Sarawak. In the premises, the cause of action and the facts on which the proceedings are based have accrued and occurred in Miri, Sarawak. Therefore, s. 23(1)(a) and (c) of the Act apply in favour of the defendant. Thus, the High Court which has the jurisdiction over this case is the High Court in Sabah and Sarawak.

Learned counsel for the plaintiff, on the other hand, submitted that the High Court of Malaya at Kuala Terengganu has the jurisdiction to hear the plaintiff's claim by virtue of s. 23(1)(c) of the Act as the facts on which the proceedings are based exist in Terengganu and in support of his submission he cited *Malacca Securities Sdn Bhd v. Loke Yu* [1998] 3 CLJ 22.

After hearing the submissions of both parties, I, on 28 November 2001 dismissed the appeal with costs and affirmed the decision of the learned SAR.

Findings Of The Court

It is worth noting that the defendant's application in encl. 6 is an application for an order to strike out the plaintiff's writ and statement of claim on the ground of lack of jurisdiction by this court to hear the plaintiffs claim. Thus, in order to decide whether or not this court has the jurisdiction, this court has to examine s. 23(1) of the Act which reads as follows:

> Subject to the limitations contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where:
>
> (a) the cause of action arose, or
>
> (b) the defendant or one of several defendants resides or has his place of business, or
>
> (c) the facts on which the proceedings are based exist or are alleged to have occurred, on
>
> (d) any land the ownership of which is disputed is situated,
>
> within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all parties consent in writing within the local jurisdiction of the other High Court.

The above subsection has four sub-paras (a), (b), (c) and (d) and each of them is followed by a comma and the word 'or', and this means that they must be construed disjunctively. Thus, a party instituting a proceeding in a High Court may do so if his case falls within any one of the subparagraphs (see *Malacca Securities Sdn Bhd, supra*).

The plaintiff's cause of action was based on a supply agreement for the supply of construction materials to the defendant's project in Paka, Terengganu. Further, the defendant was having a business address at No. 743, Jalan Besar, Kg. Cacar Batu, 23100 Paka, Dungun, Terengganu. These facts were not denied by the defendant. Thus, the plaintiff has clearly brought itself within s. 23(1)(c) and (b) of the Act as the facts on which the action is based occurred in Terengganu and the defendant was having its place of business in Terengganu. I therefore hold that the plaintiff is entitled to file its action at Kuala Terengganu High Court and accordingly, this court has the jurisdiction to hear the plaintiff's action, even though the defendant is correct in its argument that the cause of action arose and the facts on which the action is based have also occurred in Miri, Sarawak coupled with the fact that the defendant resides there too. Thus, from the facts of this case it appears that both the High Courts at Kuala Terengganu and Sarawak do have the jurisdiction to hear the plaintiff's claim.

What the defendant ought to have done in this case is to have the case transferred to Sarawak. In this respect, learned counsel for the plaintiff is right in pointing out that the defendant should have resorted to O. 92 r. 3A(1) of the RHC by making an application to the chief judges for an order to transfer the case to Sarawak rather than make an application to strike out the plaintiff's action as it did in the instant case. The defendant's application was misconceived.

Order 92 r. 3A(1) of the RHC states:

> An order to transfer any proceedings from a High Court to another shall be made with the approval of the Chief Judges.

This new provision was introduced *vide* PU(A) 342 dated 21 September 2000 which came into force with effect from 22 September 2000. By its terms, the provision clearly provides for an administrative mechanism for the transfer of proceedings from a High Court Malaya to a High Court Sabah and Sarawak and *vice versa*.

Perhaps, O. 92 r. 3A(1) of the RHC was inserted in response to the Federal Court's decision in *Fung Beng Tiat v. Marid Construction Co* [1997] 2 CLJ 1 at p. 8 where Gopal Sri Ram JCA (delivering the judgment of the court) said:

> ... As presently advised, there is absent in any Federal legislation that confers power upon the one High Court to transfer proceedings to the other.

The defendant had failed to make such application based on the new provision. The power of striking out pleading under O. 18 r. 19 of the RHC is too well-known that it can only be exercised when a claim on the face of it is obviously bound to fail. The plaintiff's claim, however, is not such a case. Thus, I found the defendant's application devoid of any merit. In the circumstances, I made the orders accordingly.